

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Phillips Exeter Academy

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:44 IV liquidated damages

Employer: Phillips Exeter Academy, 20 Main St, Exeter NH 03833

Date of Hearing: February 2, 2016

Case No.: 51572

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$75.00 in unpaid wages. He further sought liquidated damages on these wages, as well on his final paycheck of \$98.24, which the employer failed to pay within seventy-two hours of his termination.

At the hearing, the claimant clarified he was seeking six hours of pay for three separate days on which he appeared at the employer's request, and did not receive any pay at all. He seeks the required two hour minimum for each day. The claimant provided three dates: July 25, 2015, on which he received counseling for poor job performance with the employer and a requirement to visit with the Employee Assistance Program; July 29, 2015, on which he satisfied the employer's request to see a professional through the Employee Assistance Program; and August 26, 2015, on which the employer terminated his employment (though the letter is dated August 25, 2015). He amended the total of his claim to \$98.28, or \$16.38 per hour x six hours, plus liquidated damages.

The employer argues the claimant did not record any of these dates on his time record, therefore, he did not receive any payment. Had he recorded the hours, he would have been paid.

The employer also testified they were aware of the requirement to pay the final wages within seventy-two hours. However, because of the timing of the termination, payroll has already been run. It was an oversight on her part to not pull the check manually to present it to the claimant within the required timeframe.

FINDINGS OF FACT

The claimant worked for the employer receiving an hourly rate of \$16.38.

The claimant did not receive any wages for meetings he attended on three separate dates, for or with the employer. He seeks \$98.28 for the required two hour minimum for each of the three dates: July 25, 2015, on which he received counseling for poor job performance with the employer and a requirement to visit with the Employee Assistance Program; July 29, 2015, on which he satisfied the employer's request to see a professional through the Employee Assistance Program; and August 26, 2015, on which the employer terminated his employment (though the letter is dated August 25, 2015).

The employer argued they did not pay the claimant because he did not record the time on his time record.

RSA 279:27 reads, in relevant part, "Every employer of employees shall keep a true and accurate record of the hours worked by each." While the employer has delegated the record keeping task to the claimant, it is ultimately their responsibility to do so.

The employer presented documentation to show the claimant did work a full shift on July 25, 2015, the day of the initial counseling between the employer and claimant. The claimant agreed he had worked that day. He also provided credible testimony that the counseling meeting with the employer lasted no more than one hour. The employer did not pay the claimant for that one hour.

The employer did not pay the claimant any wages for the Employee Assistance Program meeting on July 29, 2015, nor for the termination meeting on August 26, 2015.

Because the claimant met with the employer, at their request, on two occasions and attended an Employee Assistance Program meeting, at their request, their argument they were unaware of the claimant's time worked is not persuasive.

RSA 275:43-a requires an employer to pay an employee a minimum of two hours pay for any **day** on which the employee reports to work at the employer's request.

On July 25, 2015, the claimant work a shift 4:00pm to 12:00am. He attended the approximate one hour meeting earlier in the day. Because he worked and was paid greater than two hours on that day, the employer is only required to pay for the time of the meeting, or one hour at \$16.38.

The employer did not pay any wages for July 29, 2015, or August 25, 2015. Both meetings lasted less than two hours. The employer is required to pay the claimant a minimum of two hours for each day.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due five hours pay, or \$81.90 (five hours x \$16.38 per hour).

The claimant seeks liquidated damages for the hours not paid, as well as for his final paycheck with the employer paid on September 3, 2015, the next regular payday,

and not within seventy-two hours of his termination on August 26, 2015 (or four days late, excluding Sundays).

The employer agreed she understood the requirement of paying the claimant's wages in accordance with RSA 275:44 IV, and in this case, within seventy-two hours. Failing to pay the claimant within the prescribed timeframe was an "oversight" on her part.

The employer provided the claimant with a letter dated August 25, 2015, on August 26, 2015, as notice of his termination from employment. The letter specified that the claimant would receive his final paycheck on Thursday, September 3, 2015, which all parties agree was the next regular payday.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The Hearing Officer does not find the employer's argument that failing to pay the claimant's final wages as prescribed in RSA 275:44 IV was an oversight, persuasive, as the employer outlined in the claimant's termination letter that he would receive his final wages on the next regular payday, or four days later than allowed by statute.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence that the employer was aware of the wages, had the financial ability to pay, and voluntarily chose not to pay the wages in the required timeframe.

The claimant's final paycheck was \$98.24, gross. He received this check four days later than allowed by statute. Pursuant to RSA 275:44 IV, the employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller. The employer is liable for \$9.82 per day for four days, or \$39.30.

The employer also failed to pay the claimant's wages for July 25, July 29, and August 26, 2015, stating they did not know the claimant had worked because he did not record the hours on his time record. He seeks liquidated damages on these wages as well.

These wages should have been paid on the appropriate corresponding pay day with the pay period in which the time worked. The employer failed to do so. They also failed to pay these wages with the claimant's final wages or at any time thereafter.

The employer's argument that they were unaware the claimant worked these hours because he did not record them on his time record is not persuasive because the claimant met with the employer, at their request, on these two occasions and attended an Employee Assistance Program meeting, at their request.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence that the employer was aware of the wages, had the financial ability to pay, and voluntarily chose not to pay the wages in the required timeframe.

The claimant's wages due are \$81.90, gross. He has yet to receive these wages. RSA 275:44 IV reads, the employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller. The employer is liable for \$8.19 per day for ten days, or \$81.90.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant proved by a preponderance of the evidence that he is owed a portion of the claimed wages, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$81.90.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant proved by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that this portion of the Wage Claim for liquidated damages is valid in the amount of \$121.20 (\$39.30 + \$81.90).

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$203.10, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: February 11, 2016

Original: Claimant
cc: Employer

MJD/aph